

JUDGE SWAIN

10 CV 328

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

SHIMSHON WEXLER individually and on
behalf of a class,

Plaintiffs,

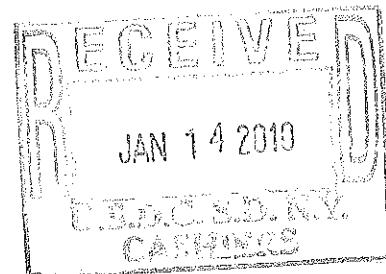
COMPLAINT – CLASS ACTION

v.

ALLIANCEONE RECEIVABLES
MANAGEMENT, INC.,

Defendant.

X



INTRODUCTION

1. Plaintiff brings this action to secure redress from unlawful credit and collection practices engaged in by defendant Alliance One Receivables Management, Inc. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").

2. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331 and 28 U.S.C. §1337.

4. Venue and personal jurisdiction in this District are proper because:
a. Defendant's collection communications were received by plaintiff within this District;

b. Defendant does business within this District.

5. Plaintiff, Shimshon Wexler, is an individual who resides in New York County, New York.

6. Defendant, AllianceOne Receivables Management, Inc., is a corporation chartered under Delaware law with offices at 4850 E Street Road, Suite 300, Trevose, PA 19053. Its registered agent is the CT Corporation System, 111 8th Avenue, New York, New York 10011.

7. Defendant is engaged in the business of a collection agency, collecting debts allegedly owed to others.

8. Defendant is a debt collector as defined in the FDCPA.

FACTS

9. On or about November 2, 2009, plaintiff was sent the collection letter attached as Exhibit A, bearing defendant's name and logo.

10. Exhibit A sought to collect a debt incurred for personal, family or household purposes, namely fees for a personal EZ Pass account.

11. Exhibit A is a standard form document.

12. More than 200 examples of Exhibit A have been sent out during the last 12 months.

13. Exhibit A is sent out with the knowledge and consent of defendant.

14. Exhibit A has a bar-coded address, which the Postal Service requires for mail that is sent in volume to qualify for discounted postage.

15. Documents in the form represented by Exhibit A are regularly sent to collect delinquent debts allegedly owed to New Jersey E-Z Pass.

16. Exhibit A says “All contacts and payments are to be made through this office to ensure proper posting and credit reporting” (emphasis added).

17. Plaintiff called the 800 number provided on exhibit A and spoke with Lilly Stuart who advised that “there is no credit reporting with regards to EZ-Pass accounts.”

18. Upon information and belief, defendant never reported debts it collected on behalf of EZ-Pass to credit reporting agencies.

19. Exhibit A is a device intended to mislead and frighten consumers into believing that their credit will be damaged if they don’t pay the account.

20. Exhibit A says “Your NJ E-Z Pass account has now placed with AllianceOne for immediate collection efforts.”

21. The least sophisticated consumer is likely to understand “immediate collection efforts” as an effort to extract immediate payment.

22. Exhibit A says “In the event your vehicle is pulled over you face the possibility of having it impounded.”

23. Upon information and belief, police are not authorized to pull vehicles over and impound them solely because the police through the use of technology determined that the license plate is associated with an E-Z Pass account that has an outstanding balance.

VIOLATIONS ALLEGED

24. Exhibit A violates 15 U.S.C. §§1692, 1692e (10), 1692(a)(4).

25. Section 1692e provides:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:...

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt....

26. AllianceOne violated the above statute because Exhibit A is deceptive, misleading and false.

27. Exhibit A indicates that there is credit reporting involved with past due debts and upon information and belief there is not.

28. Exhibit A indicates that police use technology to monitor vehicles which owe money to E-Z Pass and may pull them over solely for that reason and impound their vehicle and upon information and belief this is not true.

29. Section 1692g provides:

§ 1692g. Validation of debts

(a) Notice of debt; contents. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing

* * * *

(4) A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector.

30. AllianceOne violated the above provision because the provision requires that consumers be notified that they have 30 days to dispute the validity of the debt. AllianceOne overshadowed or contradicted the requirement by saying "Your NJ E-Z Pass account has ... now been placed with AllianceOne for immediate collection efforts" thereby causing consumers to believe they do not have 30 days to dispute the debt.

CLASS ALLEGATIONS

31. Plaintiff brings this action on behalf of a class, pursuant to Fed.R.Civ.P. 23(a) and 23(b) (3).

32. The class consists of (a) all individuals (b) with a U.S. address (c) who were sent a letter in the form represented by Exhibit A (d) on or after a date one year prior to the filing of this action.

33. The class is so numerous that joinder of all members is not practicable. On information and belief, there are at least 40 members of the class.

34. There are questions of law and fact common to the class, which common questions predominate over any questions relating to individual class members. The predominant common question is whether Exhibit A violates the FDCPA.

35. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

36. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

37. A class action is superior for the fair and efficient adjudication of this matter, in that individual actions are not economically feasible.

a. Members of the class are likely to be unaware of their rights;
b. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendant for:

(1) Statutory damages;

- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other and further relief as the Court deems proper.

DEMAND FOR TRIAL BY JURY

Plaintiff requests trial by jury on all issues so triable.

Dated: New York, New York
January 13, 2010



AARON COHEN, ESQ. (AC0613)
THE COHEN LAW OFFICE, P.C.
Attorney for Plaintiff
300 E. 42nd Street, 10th Floor
New York, New York 10017
Telephone: (212)-537-6860
acohen@cohenlawpc.net

EXHIBIT A

| CREDITOR | DATE | TICKET# | TOLL FEES | TRANSP FEES | ADMIN FEES | PMT RCV | TOTAL |
|--------------------|----------|---------|-----------|-------------|------------|---------|-------|
| NEW JERSEY E-ZPASS | 10-28-09 | | 33.25 | 21.00 | 25.00 | 0.00 | 79.25 |
| TOTAL | | | 33.25 | 21.00 | 25.00 | 0.00 | 79.25 |